

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3608 of 2004
Date of Decision: 13.10.2006

Kumar Bus Service Registered, Sirhind and others

Petitioners

versus

State of Punjab and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE PRITAM PAL

Present: Shri Baldev Kapoor, Advocate for the petitioners
Shri P.S.Chhina, Additional Advocate General, Punjab
Shri L.R.Sharma, Advocate for respondent No.4

Jasbir Singh, J.

Petitioners are holding regular Stage Carriage Permits and have filed this writ petition with a prayer to issue a writ of certiorari to declare Rule 122 of the Punjab Motor Vehicles Rules, 1989 (in short the Rules) as void being ultra vires to the provisions of the Motor Vehicles Act, 1988 (in short the Act).

It is case of the petitioners that Rule, referred to above, provides, contrary to the provisions of Section 68 of the Act, delegation of quasi judicial functions of the Regional Transport Authority to respondent No.3, as such, it deserves to be quashed. Respondent No.4 is also a stage carriage permit holder. He moved an application under Section 80 of the Act for variation in the route, on which, he was entitled to ply his bus, as per permit granted to him. His application was published for inviting objections. The petitioners at that stage, filed this writ petition. It was their primary grievance that as no powers have been conferred upon respondent

No.3, to entertain such like applications, he has no jurisdiction to proceed further with the application moved by respondent No.4. It was positive case of the petitioners that the State Government has not issued any notification either appointing respondent No.3 or delegating the powers of Regional Transport Authority to it under Section 68 of the Act. It was further averred by the petitioners that respondent No.2 has got no jurisdiction to delegate the quasi judicial functions of the Regional Transport Authority to respondent No.3. It was further grievance of the petitioners that respondent No.4 has no jurisdiction to entertain and consider application, for grant of extension of a route, which has not been formulated by the State of Punjab under Section 68 (3)(ca) of the Act.

Upon notice, reply has been filed by respondent Nos.1 to 3 and also by respondent No.4. The official respondents have said that powers have rightly been delegated by respondent No.2 to respondent No.3, by issuing a notification, copy of which has been placed on record as Annexure R/1. It has further been said that in view of the provisions of Section 68 of the Act and Rule 122 of the Rules, the delegation is perfectly justified. It has further been stated that the application of respondent No.4 is under consideration, the authority may or may not grant his prayer, as such, the writ petition, being pre-matured, be dismissed, as no cause of action has yet accrued in favour of the petitioners.

Respondent No.4, in his written statement, has also justified action of respondent No.3, in entertaining his application. It has been prayed by respondent No.4 that the writ petition, having no substance, be dismissed.

At the time of arguments, Shri Kapoor, appearing for the petitioners, in view of notification Annexure R/1, has not pressed his

argument that the respondent No.3 is not competent to entertain application of respondent No.4 for variation in his route permit. Counsel for the both the parties, have virtually conceded that in view of provisions of Section 68 of the Act and Rule 122 of the Rules, respondent No.2 has jurisdiction to delegate some of its powers, as per law. Shri Kapoor has primarily raised his objection regarding Rule 122 of the Rules, by stating that the same can be mis-used and on account of that, it was prayed that the later portion of Rule 122 of the Rules, be quashed, being ultra vires to the provisions of Section 68 of the Act.

Prayer made has vehemently been opposed and it has been stated that no foundation has been laid to say so in the writ petition. It has further been said that Rule 122 of the Rules has been framed by exercising the powers under Section 96 of the Act and the same is perfectly valid and the provisions of this Rule are not in derogation of the provisions of Section 68 of the Act.

For proper adjudication of these disputed questions, it is necessary to look into provisions of Section 68 of the Act and Rule 122 of the Rules.

Section 68 of the Act reads thus:-

“68. Transport Authorities.- (1) The State Government shall by notification in the Official Gazette, constitute for the State a State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification in respect of each Regional Transport Authority; the powers and

functions conferred by or under this Chapter on such Authorities:

Provided that in the Union Territories, the Administrator may abstain from constituting any Regional Transport Authority.

(2) A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law and in the case of a State Transport Authority, such other persons (whether officials or not), not being more than four and, in the case of a Regional Transport Authority, such other persons (whether officials or not), no being more than two, as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed, or continue to be, a member of a State or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall within four weeks of so doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office:

Provided that nothing in this sub-section shall prevent any of the members of the State Transport Authority or a Regional Transport Authority, as the case may be, to preside over a meeting of such Authority during the absence of the

Chairman, notwithstanding that such member does not possess judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law:

Provided further that the State Government may,-

- (i) where it considers necessary or expedient so to do, constitute the State Transport Authority or a Regional Transport Authority for any region so as to consist of only one member who shall be an official with judicial experience or experience as any appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law;*
- (ii) by rules made in this behalf, provide for the transaction of business of such authorities in the absence of the Chairman of any other member and specify the circumstances under which, and the manner in which, such business could be so transacted:*

Provided also that nothing in this subsection shall be construed as debarring an official (other than an official connected directly with the management or operation of a transport undertaking) from being appointed or continuing as a member of any such authority merely by reason of the fact that the Government employing

the official has, or acquires, any financial interest in a transport undertaking.

(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued under Section 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or under this Act, exercise and discharge throughout the State the following powers and functions, namely:-

- (a) to coordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;*
- (b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;*
- (c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and*
- (ca) Government to formulate routes for plying stage carriages; and*
- (d) to discharge such other functions as may be prescribed.*

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a State Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority, and the Regional Transport Authority shall, in the discharge of its functions under this Act, give effect to and be guided by such directions.

(5) The State Transport Authority and any Regional Transport Authority, if authorised in this behalf by rules made under section 96, may delegate such of its powers and functions to such authority or person subject to such restrictions, limitations and conditions as may be prescribed by the said rules.”

Rule 122 of the Rules reads thus:-

“122. Delegation of powers by State Transport Authority and Regional Transport Authority. *(1) The State Transport Authority may by a general or special resolution passed in its meeting, delegate all or any of its powers under these rules to its Chairman:*

Provided that the aforesaid powers may also be delegated in the aforesaid manner to the Secretary of the State Transport Authority who shall exercise these powers only when the Chairman is away from the headquarters of the authority.

(2) The Regional Transport Authority may delegate all or any of its powers to the Commissioners of the Divisions, Deputy Commissioners of the Districts or any other Officer of the Motor Vehicles Department by passing a general or special resolution:

Provided that the Regional Transport Authority may by general or special resolution passed in its meeting, delegate its following powers to its Chairman, subject to the conditions mentioned therein, namely:-

(i) The powers of permitting the transfer of permit under sub-section(2) of Section 82:

Provided that this power is exercised after full enquiry and after full satisfaction about the contents of the application made for transfer of permit.

(ii) the powers of granting replacement of vehicles under Section 83;

(iii) the powers of granting temporary permits under Section 87; and

(iv) the powers of granting countersignatures of permit under Section 88:

Provided that the aforesaid powers may also be delegated to the Secretary of the Regional Transport Authority in the aforesaid manner who shall exercise these powers only in the case when the chairman is away from headquarters of the authority and a reference to him will involve of delay which in the circumstances is unreasonable:

Provided further that the aforesaid powers may also be delegated to the Assistant Secretary of the Regional Transport Authority in the aforesaid manner who will exercise these powers only in the case when both Chairman and the Secretary are away from the headquarters of the authority and a reference to either of them will involve an amount of delay:

Provided further that any order passed by the Assistant Secretary in the capacity of delegated authority the orders so passed shall be got confirmed from the Secretary of the Regional Transport Authority concerned.

(3) A Regional Transport Authority may delegate its powers of issuing a duplicate permit or parts of a permit, as the case may be, under these rules to its Secretary or Assistant Secretary in the manner as specified in sub-rule (1).”

A reading of Section 68 demonstrates that the State Government, by issuing a notification, is empowered to constitute a State Transport Authority to exercise and discharge the powers and functions as specified in sub-section 3 of this provision. Government is further entitled to constitute Regional Transport Authorities to exercise, in any region, the power under the authority conferred by or under Chapter V. Sub-section 2 of Section 68 talks of the composition of the State Transport Authority and requisite qualifications and disqualifications etc. of its Chairman/ members. Second proviso to sub-section 2 of Section 68 envisages that State Transport Authority or Regional Transport Authority may consist of only one Member, who shall be an official with judicial experience or experience as an Appellate or Revisional Authority or as an adjudicating authority

competent to pass any order or take any decision under any law. Sub-section 3 of Section 68 envisages the functions to be undertaken by the State Transport Authority/ Regional Transport Authorities. Sub-section 4 envisages issuance of directions by State Transport Authority to the Regional Transport Authorities in exercising and discharge of its powers and functions. A reading of sub-section 5 clearly indicates that the State Transport Authority and the Regional Transport Authorities if permitted by framing Rules under Section 96 of the Act, may delegate such of its powers and functions, to such authority or person subject to restrictions etc., as may be provided in those Rules. A reading of this Section makes it very clear that the State Transport Authority has the power to delegate some of its powers further, as may be prescribed under the Rules.

The State of Punjab, in view of the provisions of Section 96 of the Act, framed Rule 122 for the purpose of Chapter V of the Act. Rule 122 (2) of the Rules, envisages that the Regional Transport Authority, may delegate all or any of its powers to the Commissioners of the Divisions, Deputy Commissioners of the Districts or any other officers of the Motor Vehicles Department, by passing a general or special resolution. In the present case, in view of the provisions of Rule 122 of the Rules, the respondent No.2, who is the one member Regional Transport Authority of the State of Punjab, has delegated some of its powers to the Additional State Transport Commissioner for the Ferozepur and Patiala region and to the Joint Transport Commissioner for Jalandhar region.

The primary objection of Shri Kapoor is to the last portion of the provisions of sub-Rule 2 of Rule 122 of the Rules. That provision reads thus:-

“The Regional Transport Authority may delegate all or any of its powers to the Commissioners of the Divisions, Deputy Commissioners of the Districts or any other Officer of the Motor Vehicles Department by passing a general or special resolution”

Shri Kapoor has objection to the including of the officers of the Motor Vehicle Department, to whom powers can be delegated by the Regional Transport Authority. It has been said that as no qualification has been mentioned, the powers are likely to be mis-used. To say so, reference has been made to the provisio of Section 68 of the Act, which envisages the constitution of a Regional Transport Authority, consisting of only one member, who shall be an official with judicial experience or experience as an appellate or revisional authority or as an adjudicating authority competent to pass any order etc. It has been said that as no qualification has been envisaged for delegation of powers to officers of the Transport Department, it runs contrary to the provisions of Section 68 of the Act, as such, later portion of sub-Rule 2 of Rule 122 of the Rules, deserves to be set aside.

This Court feels that the objection raised is not tenable. As has been stated by Shri Sharma that the delegation has been made to very senior officers of Transport Department and in view of their status, they had acquired the requisite qualifications, as are envisaged under the provisions of Section 68(2) to act as delegatee of the Regional Transport Authority. To say so, reference has been made to the provisions of Rules 238 and 239 of the Rules.

Shri Chhina has specifically stated that neither in the past nor in future, any officer, who is not possessing qualifications as envisaged

under Section 68 of the Act, shall be asked to perform the duties of a Regional Transport Authority or / its delegatee.

In view of the clear undertaking given and facts stated above, contention raised by Shri Kapoor deserves to be rejected.

Furthermore, authority to delegate powers has been given to the State Transport Authority and the Regional Transport Authorities, to delegate its powers subject to the Rules. In sub-section 5 of Section 68 of the Act, no condition has been laid down, it has only been said that these authorities can delegate their powers subject to the restrictions, as may be imposed under the Rules. Sub-rule 2 of Rule 122 provides that the Regional Transport Authority can delegate the powers to the Commissioners of the Divisions, Deputy Commissioners of the Districts or any other officer of the Motor Vehicles Department by passing a general or special resolution. The officers, to whom powers have been delegated, as per rule 238 of the Rules, are Class-I officers of the Transport Department and as per provisions of Rule 238 of the Rules, these officers can exercise powers of the Superintendent of Police with respect to the offences under the Act.

Contention of Shri Sharma, that in this writ petition, no foundation has been set up to lay challenge to the provisions of Rule 122 of the Rules, is also justified.

Shri Kapoor has failed to refer to any part of the writ petition, where anything has been stated with regard to the vires of Rule 122 of the Rules. On this count also, the writ petition is bound to fail. No case is made out for interference.

Dismissed.

(Jasbir Singh)
Judge

October 13, 2006
gk

(Pritam Pal)
Judge